



**Before The  
State of Wisconsin  
DIVISION OF HEARINGS AND APPEALS**

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In the Matter of WPDES Permit No. WI-0061794-  
04-0, Issued to B&D Dairy Farm, LLC

Case No. DNR-19-0004

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**NOTICE OF PREHEARING CONFERENCE AND ORDER FOR PUBLICATION**

On July 1, 2019, the Department of Natural Resources (DNR) issued a Wisconsin Pollutant Discharge Elimination System (WPDES) Permit, No. WI-0061794-04-0, to B&D Dairy Farm, LLC. The permit was issued to regulate the discharge from a livestock operation located at (Main Farm) W7251 E. 6<sup>th</sup> Rd., Pound, Wisconsin, (Heifer Facility) W7276 E. 6<sup>th</sup> Rd., Pound, Wisconsin, (Little River Satellite WSF) 7651 Hillcrest Rd., Oconto, Wisconsin, which would discharge into Little Peshtigo River, Lower Peshtigo River, Little River, Middle Peshtigo River and Thunder River Watersheds, Lake Michigan Basin in accordance with the effluent limitations, monitoring requirements, and other conditions on the management and utilization of manure and process wastewater specified in the permit.

On July 26, 2019, the B&D Dairy Farm, LLC, filed a Petition for a Contested Case Hearing with the DNR to review the decision to reissue the WPDES permit to B&D Dairy Farm, LLC, pursuant to Wis. Stat. § 283.63.

By letter dated August 6, 2019, the DNR granted the request for contested case hearing and limited the hearing to the following issues:

1. The reasonableness of Sections 2, 3.5, and 3.6 of the Permit requiring installation of a groundwater monitoring system and monitoring of groundwater at the B&D production area (Petition Issues 1.b. and 5.a).
2. The reasonableness of the due dates to install a groundwater monitoring system in Section 3.5 of the Permit (Petition issues 1.c. and 5.c.).
3. The reasonableness of the schedule for submitting, if needed, Plans and Specifications and Corrections and Post Construction Documentation for Feed Storage Runoff Controls in Section 3.7 of the Permit (Petition issues 1.d., 5.d. and 5.e.).
4. The reasonableness of the schedule for submitting, if needed, Plans and Specifications and Corrections and Post Construction Documentation for the Runoff Controls for the heifer facility lots, the NW calf hutch area and the NE calf hutch area in Section 3.8 of the Permit (Petition issues 1.d., 5.d. and 5.e.).
5. The reasonableness of the schedule for submitting, if needed, Plans and Specifications and Corrections and Post Construction Documentation for the Runoff Controls for the Manure Storage Facility 1 in Section 3.10 of the Permit (Petition issues 1.d., 5.d. and 5.f.).
6. The reasonableness of omitting from the Permit provisions to accommodate projected growth of the herd to 19,590 animal units during the permit term (Petition issue 1.g.).

On October 1, 2019, the Division of Hearings and Appeals received, for filing, an original request for hearing from the DNR. The parties have conferred and agreed to a date for a prehearing conference.

**NOTICE IS HEREBY GIVEN** that the State of Wisconsin Division of Hearings and Appeals will hold a prehearing conference on the above-captioned matter pursuant to Wis. Stat. § 227.46(1), Wis. Admin. Code Ch. NR 203, Wis. Admin. Code § NR 2.08(5), and Wis. Admin. Code § NR 2.12, **at 1:00 PM on November 15, 2019**, in Room 85, 819 N 6th Street, Milwaukee, Wisconsin 53203-1685.

Any person, organization, or governmental unit wishing to become a party to this proceeding must attend the conference in person or by an authorized representative. The purpose of the prehearing conference will be to identify parties to the proceeding, to simplify or clarify the issues which may be contested at the hearing, identify witnesses, discuss the exchange of exhibits, establish a discovery schedule, address any other matters as may aid in the disposition of the action, and schedule a date for the contested case hearing. No testimony will be heard at the prehearing conference. However, a date may be selected for a contested case hearing.

Pursuant to Wis. Admin. Code § NR 203.136(d), the DNR may modify the permit if the DNR and the Petitioner enter into a signed stipulation to resolve the contested case hearing and the stipulation specifies a change to the permit term or condition that was the subject of the contested case hearing.

If a contested case hearing is scheduled, it will be a Class 1 contested case pursuant to Wis. Stat. § 227.01(3)(a). The procedures set forth in Wis. Stat. § 283.63(1)(b) and the procedures relating to contested cases set forth in Wis. Admin. Code Ch. NR 203 and Ch. NR 2 will be followed. Said procedures will closely resemble those that are normally followed at a trial in State circuit court. All parties are advised that they have the right to seek the aid and assistance of legal counsel and to be represented by legal counsel at the contested case hearing.

The permits, petitions and other information relating to the petitioner are on file and may be inspected and copied at the offices of the Department of Natural Resources, 101 South Webster Street, Madison, Wisconsin, between the hours of 9:00 a.m. and 3:30 p.m., Monday through Friday, holidays excepted. Copies of documents on file for the applicant may be obtained by writing to the Department of Natural Resources, WPDES Permit Section, P.O. Box 7921, Madison, Wisconsin, 53707-7921. Reasonable costs will be charged for copies of all information excluding public notices and fact sheets.

Pursuant to the Americans With Disabilities Act, reasonable accommodations will be made to any qualified individual upon request. Please call the Division of Hearings and Appeals at (608) 266-7709 with specific information on your request prior to the date of the scheduled prehearing or hearing.

ORDER FOR PUBLICATION

THE DIVISION, THEREFORE, ORDERS:

Pursuant to Wis. Admin. Code § NR 2.08(5) and § NR 203.18(3), the DNR shall cause a copy of the foregoing Notice to be published once **as close as practicable to** 30 days before the date of hearing as a class 1 notice under Ch. 985, Stats., in a newspaper of general circulation in the area affected by the discharge. Furthermore, pursuant to Wis. Admin. Code § NR 2.08(5), the DNR shall comply with all of the requirements of Wis. Admin. Code § NR 203.18(3). Finally, the DNR shall furnish proof of publication to the Division of Hearings and Appeals by **November 15, 2019**.

Dated at Milwaukee, Wisconsin on October 16, 2019.

STATE OF WISCONSIN  
DIVISION OF HEARINGS AND APPEALS  
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By: \_\_\_\_\_  
Kristine M. Kerig  
Administrative Law Judge